

BIS revises Country Group designations for Russia and Yemen, imposing additional licensing requirements and removing availability of certain license exceptions

27 February 2020

On 24 February 2020 the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce published a [final rule](#) amending the Export Administration Regulations (EAR) and imposing additional export licensing requirements for Russia and Yemen.

Specifically, this rule removes Russia from Country Groups A:2 and A:4 and adds it to Country Groups D:2 and D:4, based on nuclear and missile technology proliferation concerns. BIS also removed Yemen from Country Group B and added it to Country Group D:1 for national security concerns. These changes eliminate some previously available license exceptions and impose a presumption of denial on certain license applications for exports or reexports to Russia and Yemen. Additional details regarding the impact of these changes on each country are set forth below.

Russia

As a result of these country group changes, applications for the export and reexport of commodities, software, and technology (collectively, "items") controlled for the following reasons to Russia will now be reviewed with a presumption of denial:

- Proliferation of chemical and biological weapons.
- Nuclear proliferation.
- Missile technology.

However, applications for exports or reexports for items in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

The addition of Russia to Country Groups D:2 and D:4 also imposes additional licensing requirements. U.S. persons may not export, reexport, or transfer, without BIS authorization, an item where that person knows that the item will be used in the design, development, production, or use of nuclear explosive devices or missiles in or by Russia. (15 C.F.R. §§ 744.6 (a)(1)(i)(A)-(B)). With respect to nonexport activities, U.S. persons may not without a license perform a

contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by Russia. (15 C.F.R. § 744.6 (a)(2)(i)).

Further, the license requirements of 15 C.F.R. § 744.3 now apply, beyond any Commerce Control List license requirements, to exports or reexports of any items subject to the EAR if undertaken with knowledge that the transaction involves the design, development, production, or use of certain rocket systems and unmanned aerial vehicles in or by Russia (including cruise missiles, target drones, or reconnaissance drones). (15 C.F.R. § 744.3(a)(1), (3)).

BIS explained that these changes are due to Russia's lack of cooperation and accountability for U.S.-origin items and diversion to unauthorized or prohibited proliferation activities, end uses, and end users. BIS also cited Russia's lack of cooperation in BIS pre-license checks or post-shipment verifications and its attack against Sergei Skripal and his daughter, Yulia Skripal, in the United Kingdom in March of 2018.

Yemen

The removal of Yemen from Country Group B and its addition to Country Group D:1 eliminates the availability of all or part of the following license exceptions for exports and reexports to Yemen:

- Shipments of limited value (LVS, 15 C.F.R. § 740.3).
- Shipments to Country Group B (GBS, 15 C.F.R. § 740.4).
- Technology and software under restriction (TSR, 15 C.F.R. § 740.6).
- Temporary (in-country) imports, exports, reexports, and transfers (TMP, 15 C.F.R. § 740.9).
- Servicing and replacement of parts and equipment (RPL, 15 C.F.R. § 740.10).
- Gift parcels and humanitarian donations (GFT, 15 C.F.R. § 740.12).
- Baggage (BAG, 15 C.F.R. § 740.14).
- Aircraft and vessels (AVS, 15 C.F.R. § 740.15).
- Additional permissive reexports (APR, 15 C.F.R. § 740.16).
- Encryption, commodities, software, and technology (ENC, 15 C.F.R. § 740.17).

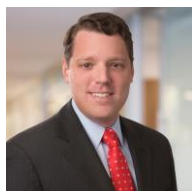
In addition, the licensing policy for Country Group D:1 under 15 C.F.R. § 742.4(b)(2) provides that applications for exports and reexports will be reviewed on a case-by-case basis and only approved when the items are for civilian use or otherwise would not make a significant contribution to the military potential of the destination country that would prove detrimental to national security. Additionally, restrictions are now imposed on exports, reexports, and in-country transfers of certain microprocessors to military end uses and end users (15 C.F.R. § 744.17), and to certain vessels and aircraft located in Yemeni ports or registered in Yemen (15 C.F.R. § 744.7). Lastly, the amendments expand the licensing requirements for reexports of foreign-produced direct products of U.S. origin technology and software controlled for National Security reasons to Yemen under 15 C.F.R. § 736.2(b)(3).

For shipments that are "on the water" as of 24 February 2020 that did not require a license to go to either Russia or Yemen, those shipments may proceed to their destination under a previously

applicable license exception or without a license (if none was required) as long as they have been exported, reexported, or transferred in-country before 25 March 2020.

Please contact the listed authors if you have questions regarding the foregoing.

Contacts



Anthony V. Capobianco
Partner, Washington, D.C.
T +1 202 637 2568
anthony.capobianco@hoganlovells.com



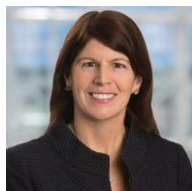
Brian P. Curran
Partner, Washington, D.C.
T +1 202 637 4886
brian.curran@hoganlovells.com



Aleksandar Dukic
Partner, Washington, D.C.
T +1 202 637 5466
aleksandar.dukic@hoganlovells.com



Ajay Kuntamukkala
Partner, Washington, D.C.
T +1 202 637 5552
ajay.kuntamukkala@hoganlovells.com



Beth Peters
Partner, Washington, D.C.
T +1 202 637 5837
beth.peters@hoganlovells.com



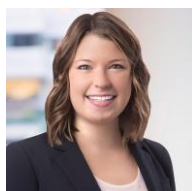
Stephen F. Propst
Partner, Washington, D.C.
T +1 202 637 5894
stephen.propst@hoganlovells.com



Anne W. Fisher
Counsel, Washington, D.C.
T +1 202 637 6569
anne.fisher@hoganlovells.com



Adam J. Berry
Senior Associate, Washington, D.C.
T +1 202 637 2871
adam.berry@hoganlovells.com



Cayla D. Ebert
Associate, Washington, D.C.
T +1 202 804 7894
cayla.ebert@hoganlovells.com

www.hoganlovells.com

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